From: peter
To: Microsoft ATR
Date: 12/7/01 10:45pm
Subject: Microsoft settlement

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I agree completely with Robert Cringly.. see below

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He's Not in It for the Profit

Steve Satchell for Microsoft Anti-Trust Compliance Committee!

By Robert X. Cringely

Two calls came in on the same subject in the same day this week, but from very different perspectives. The first call was from a lawyer working for the California Attorney General. He was looking for somebody like me to testify in the remedy phase of the Microsoft anti-trust case. California, as you know, is one of nine states that have chosen not to go along with the proposed anti-trust settlement between Microsoft and the U.S. Department of Justice. The nine states think Microsoft is getting off too easily. The second call came from Steve Satchell, an old friend from my *InfoWorld* days, who had noticed deep in the text of the proposed Microsoft/DoJ settlement that as part of the deal, there will be a three-member committee stationed at Microsoft to make sure the deal is enforced. Satch wants one of those jobs.

I think he should get the position. With a background in computer hardware and software that dates back to one of the very first nodes on the Arpanet 30 years ago, Steve Satchell knows the technology. He has worked for several big computer companies, and even designed and built his own operating systems. And from his hundreds of published computer product reviews, he knows the commercial side of the industry. He is glib and confident, too, which might come in handy while attempting to keep Microsoft honest. Sometimes there is a distinct advantage to being the first to apply for a job, so I think Satch should be a shoo-in for one of those compliance gigs. And the boy looks mighty fine in a uniform.

The job will be a challenge, that's for sure. The committee has the responsibility of settling small disputes and gathering the information needed to prosecute big ones. They are supposed to have access to ALL Microsoft source code, and their powers are sweeping. If it goes through, I only hope the court picks three tough but fair folks like Satch.

Meanwhile, there is still plenty to complain about in the text of the proposed settlement, itself.

Those who followed the case closely will remember that one of Microsoft's chief claims during the trial was that times and the nature of business have changed, and that anti-trust enforcement ought to be different today than it was when the laws were first passed in the early part of the last century. This is a fast-moving industry based on intellectual, rather than industrial, capital, goes the argument. Sure, Microsoft is on top today (and every day since it got bigger than Lotus around 1986) but, hey, that could change in a Redmond minute. This argument evidently didn't resonate with the court, though, since Microsoft was found guilty. Keep repeating to yourself: "Microsoft is guilty."

Well, Microsoft now appears to be exacting its revenge, leaning this time on the same letter of the old law to not only get a better deal, but literally to disenfranchise many of the people and organizations who feel they have been damaged by Microsoft's actions. If this deal goes through as it is written, Microsoft will emerge from the case not just unscathed, but stronger than before.

Here is what I mean. The remedies in the Proposed Final Judgement specifically protect companies in commerce -- organizations in business for profit. On the surface, that makes sense

because Microsoft was found guilty of monopolistic activities against "competing" commercial software vendors like Netscape, and other commercial vendors -- computer vendors like Compaq, for example. The Department of Justice is used to working in this kind of economic world, and has done a fair job of crafting a remedy that will rein in Microsoft without causing undue harm to the rest of the commercial portion of the industry. But Microsoft's greatest single threat on the operating system front comes from Linux -- a non-commercial product -- and it faces a growing threat on the applications front from Open Source and freeware applications.

The biggest competitor to Microsoft Internet Information Server is Apache, which comes from the Apache Foundation, a not-for-profit. Apache practically rules the Net, along with Sendmail, and Perl, both of which also come from non-profits. Yet not-for-profit organizations have no rights at all under the proposed settlement. It is as though they don't even exist.

Section III(J)(2) contains some very strong language against not-for-profits. Specifically, the language says that it need not describe nor license API, Documentation, or Communications Protocols affecting authentication and authorization to companies that don't meet Microsoft's criteria as a business: "...(c) meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business, ..."

So much for SAMBA and other Open Source projects that use Microsoft calls. The settlement gives Microsoft the right to effectively kill these products.

Section III(D) takes this disturbing trend even further. It deals with disclosure of information regarding the APIs for incorporating non-Microsoft "middleware." In this section, Microsoft discloses to Independent Software Vendors (ISVs), Independent Hardware Vendors (IHVs), Internet Access Providers (IAPs), Internet Content Providers (ICPs), and Original Equipment Manufacturers (OEMs) the information needed to inter-operate with Windows at this level. Yet, when we look in the footnotes at the legal definitions for these outfits, we find the definitions specify commercial concerns only.

But wait, there's more! Under this deal, the government is shut out, too. NASA, the national laboratories, the military, the National Institute of Standards and Technology -- even the Department of Justice itself -- have no rights. It is a good thing Afghanistan is such a low-tech adversary and that B-52s don't run Windows.

I know, I know. The government buys commercial software and uses contractors who make profits. Open Source software is sold for profit by outfits like Red Hat. It is easy to argue that I am being a bit shrill here. But I know the way Microsoft thinks. They probably saw this one coming months ago and have been falling all over themselves hoping to get it through. If this language gets through, MICROSOFT WILL FIND A WAY TO TAKE ADVANTAGE OF IT.

Is the Department of Justice really that stupid? Yes and no. They showed through the case little understanding of how the software business really functions. But they are also complying with the law which, as Microsoft argued, may not be quite in sync with the market realities of today. In the days of Roosevelt and Taft, when these laws were first being enforced, the idea that truly free products could become a major force in any industry -- well, it just would have seemed insane.

This is far from over, though. The nine states are still in the fight and you can be, too, by exercising your right under the Tunney Act to comment on the proposed settlement. The Tunney Act procedures require the United States to:

1. File a proposed Final Judgment and a Competitive Impact Statement (CIS) with the court.

2. Publish the proposed Final Judgment and CIS in the Federal Register.

3. Publish notice of the proposed Final Judgment in selected newspapers.

4. Accept comments from the public for a period of 60 days after the proposed Final Judgment is published in the Federal Register.

5. Publish the comments received, along with responses to them, in the Federal Register.

6. File the comments received and responses to them with the court.

To make your views known (and to put in a good word for Steve Satchell), there are several options:

E-mail: microsoft.atr@usdoj.gov
In the Subject line of the e-mail, type "Microsoft Settlement."

Fax: 1-202-307-1454 or 1-202-616-9937

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